

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
Roselle Catholic High School)	File No. SLD-226858
Roselle, New Jersey)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: October 31, 2003

Released: November 3, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by Roselle Catholic High School (Roselle), Roselle, New Jersey.¹ Roselle requests waiver of the Commission's rules governing the schools and libraries universal service support mechanism.² Specifically, Roselle requests a waiver of the filing deadline for Funding Year 2001.³ For the reasons set forth below, we deny Roselle's Waiver Request.

2. In Funding Year 2001, the filing window for applications closed on January 18, 2001.⁴ Applicants who filed electronically in Funding Year 2001 must have completed and mailed to SLD the Item 21 description of services, and a signed paper copy of the Block 6

¹ Letter from Alan MacDonell, Roselle Catholic High School, to the Federal Communications Commission, filed August 6, 2001 (Waiver Request).

² See Waiver Request. See also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Alan MacDonell, Roselle Catholic High School, dated July 26, 2001 (Administrator's Decision on Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Waiver Request. In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding priorities are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

⁴ In Funding Year 4, SLD processed applications as "in-window," if they were postmarked by January 18, 2001. See SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for Funding Year 4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 4 Minimum Processing Standards).

Certification by that deadline.⁵

3. Roselle submitted the electronic portion of its FCC Form 471 with SLD before the close of the filing window on January 18, 2001.⁶ On January 30, 2001, Roselle mailed its Block 6 certification page to SLD.⁷ Roselle concedes that its Block 6 certification page was filed after the close of the filing window.⁸

4. Roselle argues that it did not have clear notice that filing procedures had changed in Funding Year 2001 to require the Block 6 certification page to be postmarked by the close of the filing window.⁹ Specifically Roselle asserts that: (1) it did not have time to read all of the more than 70 pages of “What’s New” notices generated on SLD’s website between Funding Years 2000 and 2001; (2) that the application took 12 hours to file (not the 6 hours suggested on the form) without review of the “What’s New” notices; (3) the certification page was sent a day after the filing deadline; and (4) Roselle made a good faith attempt to follow the rules.¹⁰ Based on these assertions, Roselle requests a waiver of the deadline.

5. A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹¹ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹²

6. We are not persuaded that any of Roselle’s justifications constitute good cause for the Commission to waive its rules. As to Roselle’s arguments concerning notice, the Commission have determined that notice in that funding year was sufficient for the change in postmarking requirements.¹³ We therefore reject Roselle’s arguments concerning notice. Second, we have previously determined that exceeding the filing burden estimate does not create

⁵ Form 471 Instructions at 4-5. Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000). *See* SLD website, What’s New (November 2, 2000) <<http://www.sl/universalservice.org/whatsnew/110200.asp#110200>>.

⁶ FCC Form 471, Roselle Catholic High School, to the Federal Communications Commission, filed January 18, 2001 (Roselle Form 471) (electronic copy).

⁷ Roselle Form 471 (attachments and envelope in which they were mailed).

⁸ *See* Waiver Request. SLD informed Roselle that its application, Block 6 Certifications, and/or Item 21 attachments were postmarked after the filing window had closed. *See* Letter from Alan MacDonell, Roselle Catholic High School, to Schools and Libraries Division, Universal Service Administrator, filed July 18, 2001 (stating appeal is in response to SLD pink postcard mailed July 12, 2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹³ *See Application for Review of a Decision by the Wireline Competition Bureau, Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Dockets No. 96-45 and 97-21, Order, FCC 03-240 (rel. Oct. 21, 2003).

the special circumstances warranting a waiver.¹⁴ Therefore, we reject Roselle's argument that the amount of time to complete the application is a basis for a waiver of the Commission's rules.¹⁵ As for Roselle's remaining arguments, nearly satisfying the deadline and making a good faith effort, they do not demonstrate sufficient grounds to justify waiver of the Commission's rules. The Bureau has consistently declined to waive the Commission's rules based on an applicant's misunderstanding of the rules.¹⁶ We therefore find no basis for waiving the filing window deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Waiver Request filed by Roselle Catholic High School, Roselle, New Jersey, on August 6, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁴ See *Request for Review by Lacey Township School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-258994, CC Docket Nos. 96-45 and 97-21, Order, DA 03-379 (Wireline Comp. Bur. rel February 7, 2003), para. 6.

¹⁵ Applicant concerns and comments regarding the burden estimate may be filed with the Records Management Branch of the Commission at any time as noted in the statement printed in the instructions and on the form.

¹⁶ See, e.g., *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent its late filing was due to misunderstanding of program rules).